



WOLFE & WYMAN LLP

EXHIBIT "A"

Case No. 10CECG03837

Appeal Nos. F068561/F068279

IN THE APPELLATE COURT OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

Appeal from the Superior Court of Fresno County

Honorable Mark W. Snauffer, Judge

Department 503

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MARTINEZ, et al.,)	REPORTER'S TRANSCRIPT
)	ON APPEAL
Plaintiffs/Respondents/)	
Cross-Appellants,)	
)	VOLUME XXVII
vs.)	
)	
HERNDON PARTNERS, LLC.,)	
et al.,)	PAGES 4172 - 6750
)	
Defendant/Appellant/)	
Cross-Respondent.)	
-----)	MAY 30, 2013

A P P E A R A N C E S:

FOR THE PLAINTIFFS/	THE VEEN FIRM, PC
RESPONDENTS/	BY: CRAIG M. PETERS
CROSS-APPELLANTS:	711 Van Ness Avenue, Suite 220
	P. O. Box 7296
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FOR THE DEFENDANT/	HORVITZ & LEVY
APPELLANT/	BY: KAREN M. BRAY
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HERNDON PARTNERS:	Encino, California 91436

Reported by:
SUZANNE M. McKENNON, CSR, CRR, RMR
Certificate No. 9713

I N D E X - V O L U M E XXVII

SESSIONS

<u>MAY 30, 2013</u>	<u>PAGE</u>
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1 THE COURT: Okay. We're back on the record, then, in
2 the Martinez, Herndon matter. Please be seated, everybody.
3 I am informed that the jury has reached a verdict. It has
4 been presented to me. I will have the Clerk now read the
5 verdict. I will indicate in advance that we may have some --
6 a couple of issues that we're going to need clarification on
7 from the jury, but I am going to have the Clerk read the
8 verdict as it is.

9 THE JUDICIAL ASSISTANT: Judge, there is no case
10 number or caption. I can get it off of this.

11 THE COURT: Just read it off of that.

12 THE JUDICIAL ASSISTANT: In the Superior Court of the
13 State of California, Superior Court, County of Fresno, Case
14 Number 10CECG03837, Consuelo Martinez versus Herndon
15 Partners. Verdict.

16 "We, the jury, in this matter answer the questions
17 submitted to us as follows:

18 "1. Was Herndon Partners, LLC, an employer of
19 Francisco Martinez Moreno? Yes.

20 "2. Was Herndon Partners, LLC, negligent? Yes.

21 "3. Was Herndon Partners, LLC's negligence a
22 substantial factor in causing harm to Francisco Martinez
23 Moreno? Yes.

24 "4. Was Amador Electric negligent? No.

25 "5. Was Amador Electric's negligence a substantial
26 factor in causing harm to decedent Francisco Martinez Moreno?

1 No.

2 "6. What are Consuelo Martinez, Trinidad Moreno, and
3 Sofia Martinez's total damages?

4 "(a). Past economic losses: \$142,899.

5 "Past value of home services that Francisco Martinez
6 Moreno would have provided: \$121,347.

7 "Total past economic losses: \$264,246.

8 "Future economic losses: Future earning capacity that
9 decedent Francisco Martinez Moreno would have contributed:
10 \$2,000,000.

11 "Future value of home services that Francisco Martinez
12 Moreno would have provided: \$1,483,343.

13 "Total future economic losses: \$3,483,343."

14 Next line is somewhat unclear. It looks like possible
15 parenthesis, "(\$410,000."

16 And a total below that line of "\$3,303,855."

17 "Non-economic losses of Consuelo Martinez:

18 "(c). Consuelo Martinez's past non-economic losses:
19 Zero dollars.

20 "(d). Consuelo Martinez's future non-economic losses:
21 \$7,000,000.

22 "Total: \$7,000,000.

23 "Non-economic losses of Trinidad Moreno:

24 "(e). Trinidad Moreno's past non-economic losses:
25 Zero dollars.

26 "(f). Trinidad Moreno's future non-economic losses:"

1 The writing is somewhat unclear, either "\$1,000,000" or
2 "\$2,000,000." One was written over the other for a total of
3 either \$1,000,000 or \$2,000,000. One written over the other.

4 "Non-economic losses of Sofia Martinez:

5 "(g). Sofia Martinez's past non-economic losses:
6 Zero dollars.

7 "(h). Sofia Martinez's future non-economic losses:
8 \$2,000,000."

9 For a total of "\$2,000,000."

10 "7. Did defendants prove that Francisco Martinez
11 Moreno was negligent? No.

12 "8." is blank.

13 "9. Was Sierra Pacific Development, Incorporated,
14 negligent? No.

15 "10." is blank.

16 "11. Was Malibu Pacific Construction and Development,
17 Incorporated, negligent? No.

18 "12." is blank.

19 "13. For each entity or individual who received a
20 check next to their name, please assign a percentage of
21 responsibility for Francisco Martinez Moreno's death. Place
22 '0' on the lines for which there is no check box:

23 "Herndon Partners, LLC, 100 percent."

24 All other lines marked "0 percent."

25 Signed by the foreperson dated "May 30, 2013."

26 THE COURT: All right. Ladies and gentlemen, I'm

Case No. 10CECG03837

Appeal Nos. F068561/F068279

IN THE APPELLATE COURT OF THE STATE OF CALIFORNIA

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I N D E X - V O L U M E XXVII

SESSIONS

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AFTERNOON SESSION	4172

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

CIVIL DIVISION

Before the Honorable Mark W. Snauffer, Judge

Department 503

-oOo-

CONSUELO MARTINEZ, individually)
and as Successor in Interest to)
Francisco Martinez Moreno; TRINIDAD)
MORENO; and SOFIA MARTINEZ, a minor,)
by and through her Guardian ad Litem)
CONSUELO MARTINEZ,)

Plaintiffs,)

Case No. 10CECG03837

vs.)

HERNDON PARTNERS, LLC; AMADOR)
ELECTRIC; and DOES 1 - 100,)

Defendants.)

AND RELATED CROSS-ACTIONS.)

-oOo-

REPORTER'S TRIAL TRANSCRIPT

MAY 30, 2013

-oOo-

Reported by:
SUZANNE M. McKENNON, CSR, CRR, RMR
Certificate No. 9713

A P P E A R A N C E S:

FOR THE PLAINTIFFS: THE VEEN FIRM, PC
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WOOD, SMITH, HENNING & BERMAN, LLP
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FOR THE DEFENDANT AMADOR ELECTRIC: PETRIE, DORFMEIER & MORRIS, LLP
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2014 Tulare Street, Suite 830
Fresno, California 93721

1 MAY 30, 2013 - AFTERNOON SESSION

2 (Whereupon the following proceedings were
3 held in open court in the presence of the
4 Court and Counsel:)

5 THE COURT: Okay. Then we're back on the record in
6 the Martinez, Herndon matter. All Counsel are present. We
7 have a jury question that we received 20 minutes ago. We've
8 given each of you a copy of it.

9 I can understand the question, because our verdict
10 form we -- under economic loss, we lumped them all three
11 together. But under non-economic, we had specific lines for
12 each plaintiff. So I think what they want to know is: Is it
13 okay to answer the form as it is?

14 MR. HORN: And, your Honor, if I could --

15 THE COURT: Yes.

16 MR. HORN: I kind of -- sorry. But I kind of saw this
17 coming. Plaintiffs' Counsel put the -- typed this up the way
18 it is. The jury referred us to --

19 THE COURT: Well, we all agreed.

20 MR. HORN: I saw it coming. I saw it coming.

21 THE COURT: There was no objection to the form.

22 MR. HORN: There was no objection.

23 THE COURT: Go ahead. Go ahead.

24 MR. HORN: The last sentence the jury refers to 3921,
25 page 2. The last sentence computing these damages, where the
26 losses of a single amount for all plaintiffs, I would divide

1 the amount among the plaintiffs.

2 THE COURT: That's what it says.

3 Well, we're okay on question 6, because that is --
4 that is a single sum as to all three plaintiffs. So I don't
5 see any problem with number 6.

6 With respect -- I'm sorry, 6(a) and (b), we -- it is
7 an issue on (c), (d), (e), (f), (g), and (h). Now, my
8 suggestion would be to tell them to simply fill out the form
9 in its current form, and the Court can reconcile it. You
10 know, I mean in a lump sum, and the Court's not going to be
11 bound by the jury's allocation. I don't need to tell them
12 that. But it's the Court's allocation regardless of what
13 numbers they have.

14 Now, you would have the totals. I think that's --
15 otherwise, we really have to redo the verdict form, and I
16 don't really feel like we should do that.

17 MS. LANCASTER: They should follow the verdict form.

18 MR. HORN: I think they should just fill out the
19 verdict form, your Honor.

20 THE COURT: That's what I'm going to tell them, and I
21 am going to tell them not to be concerned about that last
22 paragraph. Just fill out the form as set forth.

23 MS. LANCASTER: And we do appreciate their careful
24 reading.

25 THE COURT: What's that?

26 MS. LANCASTER: We do appreciate their careful

1 reading.

2 THE COURT: It's an excellent question, and it's
3 called for, given the circumstances.

4 MR. HORN: And the subject of the economic loss, when
5 they come up with an economic loss number, --

6 THE COURT: Right.

7 MR. HORN: -- they don't give that entire amount four
8 times under 6(a) and (b). They do have to divide that up.

9 THE COURT: Well, it's just past and future is all it
10 is.

11 MR. HORN: It's past and future.

12 THE COURT: There is no individual sum there.

13 MR. HORN: No. But the earning capacity past and
14 future.

15 THE COURT: Yes.

16 MR. HORN: And home services, past and future is four
17 numbers. They don't give the five million four times.

18 THE COURT: No. It's broken down. They give for
19 past -- past loss earning capacity, past value of home
20 services, total that up.

21 Future economic loss, future earning capacity, future
22 value of home services, and future -- we don't even ask them
23 to total it. It's really for the Court.

24 MS. LANCASTER: So I think the sentence at the bottom
25 of 3921 is applicable to the economic losses; that they're
26 going to do one -- one amount, and that the Court will divide

1 that amongst the plaintiffs. But for non-economic, the
2 verdict form already has it --

3 THE COURT: No. I mean, I think the verdict form is
4 fine, because --

5 MS. LANCASTER: It says --

6 THE COURT: On the economic, it's all three of them.

7 MS. LANCASTER: Correct.

8 THE COURT: There is no amount for each individual.
9 So there is really no issue.

10 MR. HORN: Right. Correct.

11 MS. LANCASTER: It's --

12 THE COURT: The issue is on the other one. We're just
13 going to tell them, "Fill out the form as it is. If there
14 are any issues with it, the Court can deal with them later."

15 Does everybody agree that --

16 MR. HORN: Yeah, that's the way for -- the form is
17 written for all three plaintiffs.

18 THE COURT: "Just fill out the form as it is written.
19 And we understand your concern on that instruction, and it
20 doesn't affect the form."

21 MR. HORN: It says all three of them right there on
22 the first line of question 6.

23 THE COURT: Right. I mean the economic -- there is no
24 problem. It is a lump sum for all three.

25 MR. HORN: Lump sum, yeah.

26 THE COURT: Okay. Let me get my robe on.

1 (A brief recess was taken.)

2 THE COURT: Did you mark the question?

3 THE JUDICIAL ASSISTANT: Yes, sir. Court's 12.

4 (Whereupon the jury entered the courtroom.)

5 THE COURT: Okay. Please be seated, everybody. We're
6 back on the record then. All Counsel are present, the
7 plaintiff is present, and the jurors are present.

8 We are in receipt of a question in regard to -- and
9 I'll just read it. "Clarification in computing the amount of
10 damages to return a single amount for all plaintiffs or
11 divide between plaintiffs with reference to the jury
12 instruction 3291 at page 2. And it's the last paragraph of
13 page 2."

14 It's an excellent question, and a totally
15 understandable question.

16 Our answer is simply: Fill out the verdict form as it
17 is. Do not be concerned with that last instruction. Because
18 of how this is structured, (a) and (b) are for all three, and
19 so that's the sum for all three.

20 There is a breakdown on the other ones. We will deal
21 with that. But you don't need to be concerned about that.

22 You're not violating the instruction by having those
23 separate entries. So it was an excellent question, and
24 hopefully that takes care of it.

25 Thank you. We'll give you that page back to the
26 verdict form.

1 (Whereupon the jury exited the courtroom.)

2 THE COURT: They have exited again. It appears to me
3 the issue is somebody probably said, "Well, wait a minute.
4 And this is" -- they're right. You can do this for 35 years
5 and live and learn, and something always happens. So all
6 right.

7 MS. LANCASTER: And, your Honor, we'll have them
8 deliberating until 4:00 o'clock today?

9 THE DEPUTY: Okay. They have a verdict. They just
10 needed that answer.

11 THE COURT: Holy moley.

12 MR. HORN: They have a verdict?

13 THE COURT: Yes.

14 MR. HORN: Your Honor, --

15 THE COURT: Yes.

16 MR. HORN: -- are you inclined to bring the jury in
17 fairly quickly, or does Mr. Owhadi have time to get here from
18 West Herndon Street?

19 THE COURT: Where is he?

20 MR. HORN: His office is on Herndon and Palm.

21 THE COURT: Yes. I think he should be here.

22 MR. HORN: Okay.

23 THE COURT: Tell him to get here right away.

24 (A brief recess was taken.)

25 THE COURT: All right. Go ahead and bring them in.

26 (Whereupon the jury and entered the courtroom.)

1 THE COURT: Okay. We're back on the record, then, in
2 the Martinez, Herndon matter. Please be seated, everybody.
3 I am informed that the jury has reached a verdict. It has
4 been presented to me. I will have the Clerk now read the
5 verdict. I will indicate in advance that we may have some --
6 a couple of issues that we're going to need clarification on
7 from the jury, but I am going to have the Clerk read the
8 verdict as it is.

9 THE JUDICIAL ASSISTANT: Judge, there is no case
10 number or caption. I can get it off of this.

11 THE COURT: Just read it off of that.

12 THE JUDICIAL ASSISTANT: In the Superior Court of the
13 State of California, Superior Court, County of Fresno, Case
14 Number 10CECG03837, Consuelo Martinez versus Herndon
15 Partners. Verdict.

16 "We, the jury, in this matter answer the questions
17 submitted to us as follows:

18 "1. Was Herndon Partners, LLC, an employer of
19 Francisco Martinez Moreno? Yes.

20 "2. Was Herndon Partners, LLC, negligent? Yes.

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22 substantial factor in causing harm to Francisco Martinez
23 Moreno? Yes.

24 "4. Was Amador Electric negligent? No.

25 "5. Was Amador Electric's negligence a substantial
26 factor in causing harm to decedent Francisco Martinez Moreno?

1 No.

2 "6. What are Consuelo Martinez, Trinidad Moreno, and
3 Sofia Martinez's total damages?

4 "(a). Past economic losses: \$142,899.

5 "Past value of home services that Francisco Martinez
6 Moreno would have provided: \$121,347.

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9 decedent Francisco Martinez Moreno would have contributed:
10 \$2,000,000.

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12 Moreno would have provided: \$1,483,343.

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15 parenthesis, "(\$410,000."

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18 "(c). Consuelo Martinez's past non-economic losses:
19 Zero dollars.

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21 \$7,000,000.

22 "Total: \$7,000,000.

23 "Non-economic losses of Trinidad Moreno:

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25 Zero dollars.

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2 "\$2,000,000." One was written over the other for a total of
3 either \$1,000,000 or \$2,000,000. One written over the other.

4 "Non-economic losses of Sofia Martinez:

5 "(g). Sofia Martinez's past non-economic losses:
6 Zero dollars.

7 "(h). Sofia Martinez's future non-economic losses:
8 \$2,000,000."

9 For a total of "\$2,000,000."

10 "7. Did defendants prove that Francisco Martinez
11 Moreno was negligent? No.

12 "8." is blank.

13 "9. Was Sierra Pacific Development, Incorporated,
14 negligent? No.

15 "10." is blank.

16 "11. Was Malibu Pacific Construction and Development,
17 Incorporated, negligent? No.

18 "12." is blank.

19 "13. For each entity or individual who received a
20 check next to their name, please assign a percentage of
21 responsibility for Francisco Martinez Moreno's death. Place
22 '0' on the lines for which there is no check box:

23 "Herndon Partners, LLC, 100 percent."

24 All other lines marked "0 percent."

25 Signed by the foreperson dated "May 30, 2013."

26 THE COURT: All right. Ladies and gentlemen, I'm

1 going to have to ask you to go back into the jury room for a
2 few minutes. I am going to have to go over this with
3 Counsel. We may have some questions for you. But I don't
4 want to say anything or do anything until I've had that
5 opportunity. So thank you very much. I'll ask you to step
6 into the jury room for just a few minutes.

7 Run a copy of this for everybody.

8 THE JUDICIAL ASSISTANT: Yes, sir.

9 THE COURT: We're going to take a couple minutes. I
10 am going to run a copy for everybody. I want you to follow
11 along. It's important that you see the document.

12 (Whereupon the jury exited the courtroom.)

13 THE COURT: We're back now. We're passing these out
14 right now to everybody.

15 MR. PETERS: I was wondering if I can get off this
16 phone and speak with Ms. Lancaster and speak with her
17 directly.

18 THE COURT: Let me go over this in open court, and we
19 can take a recess, and you can call her.

20 Let me -- I want to give Counsel a chance to look at
21 this. The issue, from my point of view, that I am not clear
22 on are 6(b), the future value of home services. I don't --
23 up until the \$3,483 -- 3,483,343 -- I understand that they
24 added those two together. But then they've got this
25 \$410,000. I don't know what that is. I don't remember that
26 from anything --

1 MS. LANCASTER: Yeah.

2 THE COURT: And they've got a total of \$3,303,855. So

3 MR. PETRIE: The only guess I have, your Honor -- and
4 this is just a pure guess is. There was testimony about
5 personal consumption.

6 MS. LANCASTER: Right.

7 MR. PETRIE: I don't know the number 410 was ever
8 specifically talked about, but that's just a pure guess on my
9 part. That might have something to do with that.

10 MR. HORN: It looks like they totaled up the first two
11 lines on (b) and then subtracted 410.

12 THE COURT: But that's not the right total.

13 MR. HORN: That's not the right total.

14 THE COURT: So I am going to let you guys think about
15 it -- okay? And I'll let Ms. Lancaster call up north,
16 because I just -- I don't want to tell them what to do, but I
17 can't let that stand the way it is. I don't know what --
18 it's not right. And they're going to have to do something
19 with it.

20 MS. LANCASTER: And --

21 THE COURT: And the other thing is I just need
22 clarification, you know. Trinidad Moreno, is it 1,000,000 or
23 2,000,000.

24 MR. LEATH: Yeah.

25 THE COURT: I don't know. The other one on Sofia, I
26 think it's two, but I don't know that either.

1 MS. LANCASTER: Right.

2 THE COURT: So I need to ask for clarification. Can
3 you please write out a new number, whatever that is and
4 initial it.

5 MR. PETERS: So just clarifying?

6 THE COURT: Yes. Right. But why they would write
7 over a number? It's just mind-boggling to me. I can't
8 believe it. But the other one, I'm not exactly sure what to
9 do except we've got to get clarification somehow because
10 those numbers don't add up.

11 So let me take -- let me take a recess until 2:20, and
12 everybody can put their heads together.

13 And, Ms. Lancaster, you can talk to Mr. Peters if you
14 wish.

15 And I've got to do something -- I don't want to
16 discharge them with it in this situation.

17 Okay. We're in recess until 2:20.

18 (A brief recess was taken.)

19 THE COURT: Okay. Back on the record, then, in the
20 Martinez, Herndon Partners matter. Mr. Owhadi is present,
21 Mrs. Martinez is present, and Counsel are present, and the
22 jurors are not present.

23 I asked them to step out while we study this verdict
24 form. I think we need to get some clarification on 6(b), the
25 part two of that. Those numbers just don't add up. And I
26 don't know what they intended to do there. I think, then, we

1 also need to get clarification on Trinidad Moreno's future
2 non-economic loss, what that number is, and Sofia's future
3 what -- make sure we know what that number is.

4 So those are straightforward. I think I can just ask
5 them to write that out or even do it verbally.

6 The other one, I'm open to suggestion. I don't want
7 to tell them what to do. On the other hand, I have to -- I
8 think I have to do something.

9 Mr. Horn, any thoughts?

10 MR. HORN: I would think send it back to them and ask
11 them to do the math. It's an obvious math error.

12 THE COURT: Right. Well, I don't know because I don't
13 even know what that \$410,000 is.

14 MR. HORN: Either do I.

15 THE COURT: It looks like it's -- I don't know what it
16 is. But I think they need to clarify it.

17 Okay. And, then, on the other two, I'll just ask them
18 to put in the margin what the number is, no write overs,
19 because I don't want an initial, have the foreperson initial
20 it.

21 And we're, obviously, going to be polling the jury.

22 MS. LANCASTER: Maybe they can just cross out what
23 they have and write in the margin what the number is supposed
24 to be.

25 THE COURT: Yes. "So the wording would be on 6(b),
26 the future value of home services that Francisco would have

1 provided, we need clarification on the mathematics of that
2 number. Because if you're subtracting 410 from the 3,483,000
3 it doesn't total that amount, if that is what you intended to
4 do. So you need to go back into the jury room and figure
5 that out for us.

6 MS. LANCASTER: Yes.

7 THE COURT: Everybody agree with that?

8 MS. LANCASTER: Well, --

9 THE JUDICIAL ASSISTANT: Or what is that 3.3 million?

10 MS. LANCASTER: Right. I don't know what that's
11 intended to be. A subtraction?

12 THE COURT: I don't either.

13 MS. LANCASTER: So I guess my proposal would be --

14 THE COURT: If it's an addition, it would be way off.
15 It would be three million eight.

16 MS. LANCASTER: Right.

17 THE COURT: If it's a subtraction, it's way off.

18 MS. LANCASTER: It's way off.

19 THE COURT: It doesn't work.

20 "So we need clarification on what you're intending to
21 do with that number."

22 MS. LANCASTER: Sure. It seems the verdict form is
23 set up that we can only have one number per line. So we need
24 them to go back and fix that.

25 THE COURT: Everybody agree on that approach?

26 MS. LANCASTER: Yes, your Honor.

1 MR. HORN: Yes, your Honor.

2 MR. PETRIE: Yes, your Honor.

3 THE COURT: All right. Okay.

4 You know, one other thing I'll note is they answered
5 question 5, which they didn't need to do, but I don't think
6 that's material. It's surplusage since they answered
7 question 4 "No."

8 (Whereupon the jury entered the courtroom.)

9 THE COURT: Okay. Please be seated, everybody. We're
10 back on the record, then. The jurors have now joined us.

11 Ladies and gentlemen, we've got a couple of points of
12 clarification we're going to need to have you do for us. Let
13 me begin with the simpler ones. These all relate to question
14 6. Okay?

15 Going to the bottom where it says, "Non-economic
16 losses of Sofia Martinez" and the sub "(h)," we need
17 clarification as to whether -- what that number is. It looks
18 like one was written over. So I need you to write out the
19 new number in the margin there. I shouldn't say, "New
20 number." Strike that. The number, whatever it is, so it's
21 not ambiguous.

22 We have the same issue with Trinidad. I don't want to
23 tell you what it is. That's your decision. But it's not
24 clear. Okay. Those, I think, you can deal with.

25 Now, I think you can deal with the other one, too.
26 The other one, that's a little more unclear to us, is under

1 6(b), the future value of home services that Francisco
2 Martinez Moreno would have provided. Now, you notice there
3 are lines there, and you answered the first line with
4 \$2,000,000, then the second line for the future home services
5 a million four, and, then, you totaled that up?

6 Then, there is this \$410,000 number, and it's not
7 clear to us what that is intended to be. And then you have
8 another total there.

9 If it's an addition, it's not right, and if it's a
10 subtraction, it is not right. The math is not correct.

11 So you need to go back into the jury room and clarify
12 for us what that number is because, mathematically, that's
13 not consistent, and I need to have a consistent number.
14 Okay? That is it.

15 So I will give this back to you, and we'll await your
16 decision.

17 (Whereupon the jury exited the courtroom.)

18 MR. PETRIE: Your Honor, if I may, can I walk across
19 the street and feed the meter?

20 THE COURT: Yes.

21 MR. PETRIE: I didn't anticipate we would be doing
22 everything at once.

23 THE COURT: Yes. Go ahead.

24 MR. PETRIE: Thank you.

25 (A brief recess was taken.)

26 THE COURT: Okay. Okay.

1 MS. LANCASTER: Your Honor, just a few housekeeping
2 matters before the jury comes in.

3 THE COURT: Yes.

4 MS. LANCASTER: I don't know if the alternates were
5 able to be contacted before the verdict, but if not, we would
6 just request that they be informed.

7 THE COURT: They'll be informed. We couldn't get them
8 here in time to take the verdict.

9 MS. LANCASTER: Sure. And, then, just as far as
10 housekeeping, did your Honor have an idea about judgment and
11 any other matters, whether we're going to take that up this
12 afternoon?

13 THE COURT: Well, I'll read the corrections into the
14 record, and I assume we're going to poll the jury. I'm sure
15 the defense is going to request a poll. I do that usually by
16 show of hands initially. And if we do further individual
17 polling, I do that.

18 MR. HORN: And we do have a motion we need to put on
19 the record.

20 THE COURT: I'm sorry?

21 MR. HORN: We do have a motion we need to make
22 immediately.

23 THE COURT: But that's -- is that before or after I
24 discharge the jury?

25 MR. HORN: After you -- once we have the verdict, --

26 THE COURT: Yes.

1 MR. HORN: -- we need to make a motion.

2 THE COURT: All right.

3 MS. LANCASTER: And I just request, your Honor, that
4 before the jury is dismissed, if your Honor could inform them
5 that I would just like to talk to them momentarily, anybody
6 that is open to that.

7 THE COURT: Yeah, I'll tell them to remain behind in
8 the jury room. We have a few things we have to talk about
9 out here. But anyone who wants to remain behind -- they can
10 do that.

11 MS. LANCASTER: My request actually is, if there is
12 going to be a motion, we take a five- or ten-minute break, I
13 can talk to the jurors, and we can resume with all the
14 housekeeping matters.

15 THE COURT: Okay. But we need to keep it to five or
16 ten minutes.

17 MS. LANCASTER: No problem, your Honor.

18 THE COURT: I can do that.

19 MS. LANCASTER: Thank you.

20 THE COURT: All right. Let's bring them in.

21 (Whereupon the jury entered the courtroom.)

22 THE COURT: All right. Everybody, please be seated,
23 folks.

24 The jury has rejoined us.

25 Ladies and gentlemen, I have received your verdict
26 form. It does now appear to be consistent on a mathematical

1 basis, and I am going to read those changes into the record
2 so that we have a complete record.

3 Beginning with question 6(b), the issue was the future
4 value of home services that Francisco Martinez Moreno would
5 have provided. The amended answer is \$1,073,343 and added
6 together, that results in the total economic loss of
7 \$3,073,343, and that does add up.

8 And that is initialed by the foreperson, I assume.

9 And, then, skipping down to 6(f), Trinidad Moreno's
10 future non-economic losses is set at \$1,000,000. And for a
11 total of \$1,000,000 on that category. And that is initialed
12 by the foreperson.

13 And, then, with respect to item (g) -- I'm sorry 6 --
14 6(h), Sofia Martinez's future economic loss is set at
15 \$2,000,000, and for a total then of \$2,000,000, signed by the
16 foreperson.

17 And so I believe that those are now consistent now.

18 I'm assuming that somebody will request a polling of
19 the jury.

20 MR. HORN: Yes, your Honor.

21 THE COURT: All right. Now, what this means, folks --
22 and I instructed you on this previously -- is that we're
23 going to go down each question and answer, and I'm going to
24 read the question. I'm going to say what the answer is, and,
25 then, I'm going to ask you how many of you answered "Yes."
26 And I need you to raise your hands and keep them in the air

1 until I tell you to put them down, because we have to count.

2 Okay?

3 Then, if we need to do any further polling, we will,
4 but we're going to do it this way, at least, at first.

5 Okay. So going through the form, question number 1,
6 "Was Herndon Partners, LLC, an employer of Francisco Martinez
7 Moreno?" The answer was "Yes."

8 So those of you who answered "Yes," please raise your
9 hand. Okay. That is everyone, 12 votes.

10 Okay. Question 2, "Was Herndon Partners, LLC,
11 negligent?" The answer was "Yes."

12 Those of you who answered "Yes," please raise your
13 hands. Okay. 12. Thank you.

14 "3. Was Herndon Partners, LLC's negligence a
15 substantial factor in causing harm to Francisco Martinez
16 Moreno?" The answer was "Yes."

17 Those of you who answered "Yes," please raise your
18 hands. Okay. 12. Thank you.

19 "4. Was Amador Electric negligent?" The answer was
20 "No."

21 Those of you who answered "No," please raise your
22 hand. Okay. 12.

23 And, then, "5. Was Amador Electric's negligence a
24 substantial factor in causing harm to decedent Francisco
25 Martinez Moreno?" The answer there was "No," as well.

26 Those of you who answered "No"? Everyone. Okay. 12.

1 Okay. Then, we go to item 6, which are the damages,
2 and so I'll be asking on each line item here. In fact, I'm
3 going to do my own calculation here. Okay.

4 "6. What are Consuelo Martinez, Trinidad Moreno, and
5 Sofia Martinez's total damages? Do not reduce the damages
6 based on the fault, if any, of Francisco Martinez Moreno or
7 others:

8 "(a). Past" non-economic "losses: Past lost earning
9 capacity of decedent Francisco Martinez Moreno." The number
10 there was "\$142,899" -- I'm sorry, economic damage.

11 "6(a). Past lost earning capacity of decedent
12 Francisco Martinez Moreno." The number was "\$142,899."

13 Those of you who reached that number, please raise
14 your hand. 12.

15 Then, the "Past value of home services that Francisco
16 Martinez Moreno would have provided: \$121,347."

17 Those of you who reached that conclusion, please raise
18 your hand. 12.

19 And "Total past" non-economic -- gosh, darn it.
20 "Total past economic losses" total "\$264,246," which is
21 simply adding those two together.

22 Okay. So, then, we go to "(b). Future economic
23 losses. Future earning capacity that decedent Francisco
24 Martinez Moreno would have contributed: \$2,000,000."

25 Those of you who answered "\$2,000,000," please raise
26 your hand. 12.

1 "Future value of home services that Francisco Martinez
2 Moreno would have provided: \$1,073,343."

3 Those of you who reached that conclusion, please raise
4 your hand. Okay. 12, zero.

5 So there is then just the arithmetic. And the total
6 is "\$3,073,343" for that category.

7 So then we go to "6(c). Consuelo Martinez's past
8 non-economic losses" is zero.

9 Those of you who reached that conclusion, please raise
10 your hand. 12. Thank you.

11 Okay. "6(d). Consuelo Martinez's future non-economic
12 losses: \$7,000,000."

13 Those of you who reached that conclusion, please raise
14 your hand. Okay. 12.

15 And so that's the total for that category as well.

16 Then, we go to "Non-economic losses of Trinidad
17 Moreno," and the answer is zero -- I'm sorry, "6(e).
18 Trinidad Moreno's past non-economic losses" is zero.

19 Those of you who said that, please raise your hand.
20 Okay. 12, zero.

21 "(f) Trinidad Moreno's future non-economic losses:
22 \$1,000,000."

23 Those of you who reached that conclusion, please raise
24 your hand. 12.

25 Then, we go to "6(g). Sofia Martinez's past
26 non-economic loss" is zero.

1 Those of you who reached that conclusion, please raise
2 your hand. 12.

3 And, then, "6(h). Sofia Martinez's future
4 non-economic losses: \$2,000,000."

5 Those of you who reached that conclusion, please raise
6 your hand. Is that everybody? Okay. 12.

7 Okay. Then we go to question 7, "Did the defendants
8 prove that Francisco Martinez Moreno was negligent?" The
9 answer was "No."

10 Those of you who answered "No," please raise your
11 hands. 12.

12 Then, we go to question 9, "Was Sierra Pacific
13 Development, Inc., negligent?" And the answer was "No."

14 Those of you who answered "No," please raise your
15 hands. All right. 12.

16 Question 11, "Was Malibu Pacific Construction and
17 Development, Inc., negligent?" The answer was "No."

18 Those of you who answered "No," please raise your
19 hand. Okay. 12.

20 And then "13. For each entity or individual who
21 received a check next to their name, please assign a
22 percentage of responsibility for Francisco Martinez Moreno's
23 death. Place a '0' on the lines for those for which there
24 was no check box."

25 "Herndon Partners, LLC," is the only checked box, and
26 it says "100 percent." None of the other boxes are checked,

1 and zero percent is allocated for the "Total" of
2 "100 percent."

3 Those of you who voted "Herndon Partners,
4 100 percent," please raise your hand. 12.

5 Okay. Dated today's date, "5/30/13," signed by Susan
6 Guerrero, PJ, Presiding Juror.

7 And is any other polling required?

8 MR. HORN: No, your Honor.

9 MR. PETRIE: No, your Honor.

10 MS. LANCASTER: No, your Honor.

11 THE COURT: Is there any legal cause why the jury
12 should not be discharged at this time?

13 MR. HORN: No, your Honor.

14 MR. PETRIE: No, your Honor.

15 MS. LANCASTER: No, your Honor.

16 THE COURT: Okay. Now, ladies and gentlemen, what
17 we're going to do is I've had a request from Counsel, if
18 those of you who would like to stay behind for ten minutes or
19 so, they would like to come back and talk to as many of you
20 who are willing to talk. You're free to talk. You're free
21 not to talk. You're released from your admonition at this
22 point. In fact, I need to give you that instruction.

23 Hang on one second, folks.

24 Okay. This is actually from Cal-Crim 3590, but it's
25 applicable. You've now completed your jury service in this
26 case. On behalf the judges of our court and our staff,

1 please accept my sincere thanks for your time and effort in
2 this case. It was an arduous case. It was a lot of time, a
3 lot of evidence. And we really appreciate your
4 participation.

5 Now, that the case is over, you may choose whether or
6 not to discuss the case in your deliberations with anyone.
7 Now, the lawyers in this case, the defendant -- or I
8 shouldn't say that. The lawyers in this case and their
9 representatives may now talk to you about the case, including
10 your deliberations and verdict.

11 Those discussions must occur at a reasonable time and
12 place and with your consent. Please immediately report to
13 the Court any unreasonable contact made without your consent
14 by the lawyers in this case, their representatives, or anyone
15 else.

16 Okay. That's all we need for a civil case.

17 So that means you're free to discuss this case with
18 whomever you wish. You're free also not to discuss the case.
19 You're discharged at this time with our sincere thanks for
20 your participation in this process.

21 It's the best process in the world for resolving
22 disputes, and we appreciate and can't do it without you,
23 either on the criminal or the civil side. So those of you
24 who would like to remain behind, I am going to hold it to
25 about ten minutes because we do have some issues that we have
26 to discuss once you're gone.

1 But about 3:15 or 3:20. So please stay in the jury
2 room, and Counsel will come back and talk to you. And,
3 again, thank you very much. You are --

4 MS. LANCASTER: Your Honor?

5 THE COURT: -- discharged.

6 MS. LANCASTER: On behalf of the Martinez family, we
7 just want to thank you all so much for your service and your
8 patience and your thoughtfulness. This has been a huge
9 sacrifice to all of you and your families, and we really
10 appreciate that.

11 THE COURT: All right. Thank you.

12 (Whereupon the jury exited the courtroom.)

13 THE COURT: Okay. Then, we'll go back. Have Counsel
14 only.

15 MR. HORN: And, then, we can make our motions, your
16 Honor?

17 THE COURT: We'll do them when they get back.

18 MR. LEATH: One more copy of that final one that was
19 redacted or been cleaned up?

20 THE COURT: We'll run one for you.

21 MR. LEATH: Thanks.

22 (A brief recess was taken.)

23 THE COURT: Okay. Back on the record, then. The
24 jurors have been discharged. Mr. Owhadi is present,
25 Mrs. Martinez is present, and Counsel are present.

26 Mr. Horn, you had something?

1 MR. HORN: Yes, your Honor. We have several requests.
2 First to make a Motion for Nonsuit, Directed Verdict, and
3 Judgment Notwithstanding the Verdict based on the dual
4 employment doctrine and the workers' comp insurance of Malibu
5 Pacific. The Court ruled, in the trial to the Court, that
6 Malibu Pacific had workers' comp insurance, although the jury
7 didn't believe it, but the Court ruled Malibu Pacific had
8 workers' comp insurance and Malibu Pacific was an employer of
9 Mr. Martinez.

10 The jury has found in question 1 Mr. Martinez was an
11 employee of Herndon. The dual employment doctrine is
12 automatic. There is no special employment Labor Code section
13 3602 analysis. There is no valid enforceable contract. He
14 was a dual employee. We have two fact findings. He was a
15 dual employee. There was workers' comp insurance.

16 I have briefed this already. I submitted the brief
17 about a week ago, probably before that -- but certainly a
18 week ago. I submitted all the cases to the Court.

19 It is absolutely automatic that the workers' comp
20 exclusivity rule bars any remedy, any judgment, any award,
21 any verdict, any money against Herndon Partners.

22 In addition, we make a motion for mistrial, a motion
23 that no judgment be entered until after a hearing and a
24 ruling on the motions just made. And to the extent a
25 judgment is entered, we request a stay of execution pending
26 appeal. Obviously, a bond could be posted, but we don't --

1 THE COURT: Yeah. I understand. I've been there.

2 MR. HORN: I know.

3 THE COURT: I've sat where you've sat. I understand.

4 MR. HORN: The Court knows that -- whatever.

5 THE COURT: I got it. I get it.

6 Ms. Lancaster?

7 MS. LANCASTER: I'm not sure what I should respond to.

8 THE COURT: We've got a number of things. Let me
9 start with the motion for Nonsuit, Directed Verdict, and
10 JNOV. I am denying those without prejudice to those being
11 brought as formal, written motions. Those have to be
12 briefed.

13 Plaintiff, obviously, has to have an opportunity to
14 respond to that outside the pressure of a trial. I am not
15 saying -- I am not saying that either of your motions are
16 without merit or with merit or anything else. But it is not
17 the kind of thing I'm going to grant on a verbal motion.

18 Now, with respect to the entry of judgment, I,
19 obviously, am not privy to the insurance issues in this case.
20 I have no idea about that deliberately. So what I would
21 propose is that we set a hearing early next week with respect
22 to the entry of judgment.

23 MS. LANCASTER: Your Honor, --

24 THE COURT: I know you've got one already, but we've
25 got a lot of issues here, and I don't know. Do we have a
26 comp lien in this case?

1 MS. LANCASTER: The comp case has been resolved, your
2 Honor. We would ask that judgment be entered today.

3 THE COURT: I am not going to do it today. I will not
4 do it today. I will accept your proposed judgment --

5 MS. LANCASTER: An amend --

6 THE COURT: -- and look at it.

7 MS. LANCASTER: An amended judgment?

8 THE COURT: I have 24 hours.

9 MS. LANCASTER: Sure.

10 MS. LANCASTER: I will prepare a proposed judgment.
11 As your Honor stated, there are some outstanding issues, the
12 primary one being the ruling on the workers' compensation
13 issue, a determination by this Court of whether Herndon was
14 or was not insured for workers' compensation at the time.
15 That's the primary outstanding issue in our mind.

16 There was a 998 demand that expired. Plaintiffs will
17 be entitled to costs and interest as well as prejudgment
18 interest. However, we would like a judgment on file as soon
19 as possible so that interest can begin to accrue while they
20 make all of these motions --

21 THE COURT: Yes.

22 MS. LANCASTER: -- and such.

23 THE COURT: Well, okay. So what I'm going to do is
24 set this for a hearing, and we can do it on Tuesday or
25 Wednesday afternoon at 3:30. You can appear by phone. I
26 don't know that you need personal appearance. And we will

1 determine -- I will look at the proposed judgment, and I will
2 give the defendants an opportunity to submit a judgment if
3 they wish, and we'll go from there.

4 With respect to a stay, I am not -- it's not my
5 practice to enter a stay without bond for 60 or 70 days.
6 However, depending on what the coverage situation is and what
7 the degree of, you know -- I don't want to see plaintiff
8 unduly prejudiced or prejudiced at all for that matter,
9 either. So I'll take up the issue of a duration of a stay at
10 that time.

11 MS. LANCASTER: So we would be returning Tuesday or
12 Wednesday to deal with judgment. When is it that this Court
13 will hear and rule on the issue of work -- Herndon's lack of
14 workers' compensation coverage?

15 THE COURT: Well, I think that's going to have to be
16 the subject of a post-trial proceeding. And they will be
17 bringing a motion that there was coverage, and you will be
18 opposing it. And we may have to take evidence on it. I
19 don't know. We already took some evidence on this.

20 MS. LANCASTER: Right.

21 THE COURT: We had the adjuster here from -- you know,
22 I'll have to get the transcript.

23 MR. LEATH: She made the record, I believe.

24 THE COURT: We don't need to revisit that. She went
25 through the file and said, "Herndon was never a named
26 insured. We knew nothing about Herndon," et cetera, et

1 cetera.

2 I don't think that's his argument. His argument is
3 that Herndon, as a matter of law, is covered whether they
4 were a named insured or not. So I don't know that we're
5 going to need any more evidence on that.

6 MR. HORN: Judge, the argument -- we're not -- we're
7 not seeking to have State Compensation Insurance Fund pay any
8 money. The testimony of the witness who testified to that is
9 off point. It's not -- the point is the law says that the
10 exclusivity doctrine applies in dual employment. We have a
11 Court ruling and the jury ruling.

12 THE COURT: I think that's what I just said.

13 MR. HORN: Thank you.

14 THE COURT: And that's your argument.

15 MR. HORN: No. I agree.

16 And, your Honor, if I can -- with regard to the motion
17 I made -- and I understand it's denied. But if I can make
18 sure it incorporates a Motion for New Trial.

19 THE COURT: Of course. I expect them all. I have no
20 doubt --

21 MR. HORN: Thank you, your Honor.

22 THE COURT: -- we will be seeing them.

23 MS. LANCASTER: And I think, just to make sure we're
24 all on the same page, it's been both parties' position, since
25 before the jury trial, that this Court has all of the
26 evidence related to the workers' compensation issue.

1 Certainly, Mr. Horn has a different interpretation of
2 the law. But, again, if he wants to brief that, it's our
3 position it's been his position for the last 28 days that all
4 the law, all the facts, all the evidence has been submitted
5 to this Court.

6 THE COURT: Well, the difference between now and then
7 is we now have a complete record or as complete a record as
8 we're going to have as to what happened.

9 MS. LANCASTER: Right.

10 THE COURT: So that's why I didn't rule on it then.

11 MS. LANCASTER: Certainly. I understand that, your
12 Honor. Again, my understanding of Mr. Horn's contention is
13 Malibu Pacific gets paid for by Mr. Owhadi. All the rest of
14 his companies get paid for by Mr. Owhadi. Therefore, this --
15 Herndon Partners is covered by Malibu Pacific's workers' comp
16 coverage even though, as SCIF said, there was no intention,
17 and they're not covered.

18 So we can brief that. We'll oppose it. But
19 certainly, we would like an expedited briefing schedule on
20 that. It is prejudicial to the plaintiffs to postpone any
21 entry of judgment.

22 THE COURT: Well, I didn't suggest that I was going to
23 postpone the entry of judgment. I would -- I would probably
24 enter judgment and stay of execution for a limited period of
25 time.

26 And like I say, I mean, what is Herndon Partners

1 according to Mr. Horn? It's a file folder and a checkbook.
2 So I mean, it's not Chevron. You get my drift? So I have to
3 take that into consideration as well.

4 So we'll talk about that next week. Let's set this
5 for Wednesday. Okay? Does that work for everybody?

6 MS. LANCASTER: Wednesday at 3:30, your Honor?

7 THE COURT: Yes.

8 MR. HORN: Yes, your Honor. Thank you.

9 THE COURT: May -- June 5th; right?

10 THE JUDICIAL ASSISTANT: Yes.

11 THE COURT: June 5th at 3:30.

12 MS. LANCASTER: And the sole issue that will be dealt
13 with on Wednesday is the entry of judgment?

14 THE COURT: The entry of judgment, the stay of
15 execution that they're requesting and its duration and its
16 terms, and a determination as to whether we need to have some
17 sort of expedited briefing schedule on this comp issue,
18 independent of whatever other post-trial motions they're
19 going to bring. The time doesn't begin to run for their
20 post-trial motions until judgment is entered.

21 MS. LANCASTER: Correct.

22 THE COURT: So, yes, we'll talk about all of those
23 issues. I have an open mind as to how to handle them. I
24 want to handle them as expeditiously as possible. But we've
25 got a \$14 million verdict. So I mean, we have to --
26 everybody has to have due process on that. That's what I'm

1 going to be looking at.

2 MS. LANCASTER: And, your Honor, when would the Court
3 like any proposed judgments by --

4 THE COURT: I have it.

5 MS. LANCASTER: -- in case I notice a typo?

6 THE COURT: Yes.

7 MS. LANCASTER: I think you offered the defendants to
8 submit one.

9 THE COURT: You can -- you can submit it. You can
10 submit it, any changes, by e-mail to Ben, as far as I'm
11 concerned. Same thing with the defense.

12 MR. HORN: With the proposed judgment, your Honor?

13 THE COURT: Yes.

14 MR. HORN: And if something has been given to Ben
15 already, I haven't seen it.

16 THE COURT: She -- I have a judgment. She can give
17 you a copy.

18 MR. HORN: Yeah. I'm not going to get a copy.

19 THE COURT: So is there anything else we need to do
20 today?

21 MS. LANCASTER: No, your Honor. Certainly we want to
22 thank you and the staff for all of your patience and
23 incredible hard work in dealing with this case.

24 THE COURT: Well, I thank Counsel. I know that we had
25 our differences from time to time, but it's the type of case
26 where that happens. And I don't have any ill will towards

1 anybody, and I think you guys -- I will also say I think the
2 closing arguments in this case were very good on both sides.

3 MS. LANCASTER: Thank you.

4 THE COURT: I appreciate your cooperation.

5 MR. OWHADI: Thank you.

6 MR. HORN: Thank you, Judge.

7 MR. PETRIE: Thank you.

8 THE COURT: I'll see you Wednesday afternoon.

9 -oOo-

10 (Volume XXVII consists of pages 4172 to 4207.

11 There are no pages 4208 to 6750. Volume XXVIII
12 will begin on page 6751.)

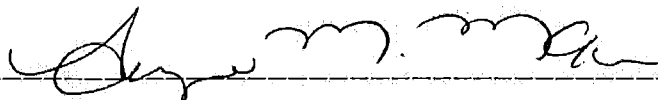
13 -oOo-

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF FRESNO)
4
5
6

7 I, SUZANNE M. McKENNON, Certified Shorthand Reporter,
8 do hereby certify that the foregoing pages 4172 to 4207,
9 inclusive, comprise a full, true and correct transcript of my
10 shorthand notes, and a full, true and correct statement of
11 the proceedings held at the time and place heretofore stated.

12 DATED: November 18, 2015

13 Fresno, California
14
15
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17 

18 SUZANNE M. McKENNON, CSR, CRR, RMR
19 CERTIFICATE NO. 9713
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